No. 100

In the Supreme Court of the United States

OCTOBER TERM, 1941

ILLINOIS NATURAL GAS COMPANY, APPELLANT

v.

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY AND ILLINOIS COMMERCE COMMISSION, APPELLEES

APPEAL FROM THE SUPREME COURT OF ILLINOIS

MEMORANDUM OF THE FEDERAL POWER COMMISSION AS AMICUS CURIAE IN SUPPORT OF JURISDICTION ON APPEAL

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This case involves a question of large importance to the Federal Power Commission in its administration of the Natural Gas Act of 1938 (52 Stat. 821, 15 U. S. C. sec. 717–717w). Although presented by the appellant, and preserved in the lower courts, we think the clarity of its presentation may be advanced by this memorandum.

1. The Illinois Commerce Commission ordered the appellant to extend its facilities and supply natural gas to the appellee company. This extension of facilities requires the construction of a lateral line from the main transmission line of the

Panhandle Eastern Natural Gas Company at or near Tuscola, Illinois, to the appellee company's facilities at or near Mattoon, Illinois, a distance of approximately 18 miles. At present, the appellee company is supplied with natural gas for the towns of Mattoon, Paris, and Effingham, Illinois, by the Universal Gas Company. Both appellant and the Universal Gas Company are subject to the Natural Gas Act.[1] Section 7 (c) of the Natural Gas Act of 1938, provides in part as follows:

> (c) No natural gas company shall undertake the construction or extension of any facilities for the transportation of natural gas to a market in which natural gas is already being served by another natural gas company, or acquire or operate any such facilities or extensions thereof, or engage in transportation by means of any new or additional facilities, or sell natural gas in any such market, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or

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[1] Section 2 (6) of the Act defines "natural gas company" as "a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale." Appellant meets this definition through the facts shown at pp. 3–5 of its Statement as to Jurisdiction. The Universal Gas Company purchases its gas at Terre Haute, Indiana, transmits it to the Illinois-Indiana state line and there sells it to the Central Illinois Public Service Company for resale in Illinois (R. 88, 89, 97, 122, 124–125, 128).

> will require such new construction or operation of any such facilities or extensions thereof * * *.

Compliance with the order of the Illinois Commerce Commission will mean that the appellant will extend its facilities into a market already served by another natural gas company, without a certificate of public convenience and necessity from the Federal Power Commission as required by section 7 (c) of the Act.

2. The appellant's answer before the Illinois Commerce Commission raised section 7 (c) of the Natural Gas Act (R. 22);[2] the Commission ruled that the Federal Power Commission, whatever the terms of the Act, was without jurisdiction (R. 166). The petition for rehearing before the Commission claimed that the order was invalid because of the necessity of obtaining a certificate of convenience and necessity from the Federal Power Commission (R. 176). The same issue was presented to the Circuit Court of Coles County, Illinois (Statement as to Jurisdiction, p. 8). The effect of section 7 (c), in making the order of the Commerce Commission inoperative until a certificate of public convenience and necessity was obtained from the Federal Power Commission, was assigned as error (No. 3) to the Supreme Court of Illinois and was briefed by appellant (pp. 21–23). The opinion of

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[2] Record references are to the transcript, as indicated by appellant's abstract filed in the Supreme Court of Illinois.

the Supreme Court of Illinois does not in terms deal with the scope of section 7 (c), but holds merely that the Federal Power Commission does not have *exclusive* jurisdiction (Statement as to Jurisdiction, pp. 27–28). However, the court, in sustaining the validity of the order of the Illinois Commerce Commission, necessarily overruled the claim of conflict with the federal statute. The issue, finally, is presented by the Statement as to Jurisdiction (p. 11).

We therefore respectfully submit that this appeal involves a substantial federal question, raised before and decided by the state courts.

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